

STATE OF MICHIGAN
COURT OF APPEALS

In re Conservatorship of CAMERON
MCMILLIAN, a Protected Individual.

CAMERON MCMILLIAN, a Protected Individual,

Appellant,

UNPUBLISHED
June 23, 2011

v

No. 297108
Wayne Probate Court
LC No. 2008-726397-CA

PAMELA S. MOWRY, Successor Conservator,
SARAH ROBINSON, Guardian Ad Litem, and
JAMES C. MCCANN, Trustee,

Appellees.

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Appellant, a protected individual,¹ appeals as of right the trial court's March 2, 2010, order denying the petition to terminate appellant's conservatorship.² We affirm.

Appellant argues that the trial court abused its discretion in denying the petition to terminate the conservatorship because it misapplied MCL 700.5431 and erred in its findings of fact. We disagree. The proper interpretation and application of a statute is a question of law that is reviewed de novo. *Eggleston v Bio-Med Applications of Detroit, Inc.*, 468 Mich 29, 32; 658 NW2d 139 (2003). An appeal from a probate court's decision is reviewed "on the record, not de

¹ Appellant had been involved in an automobile accident that resulted in traumatic brain injury. His estate received a settlement of approximately \$2,116,575. The trial court granted a petition for guardianship and conservatorship because appellant was a legally incapacitated person. Appellant's mother, Evelyn McMillian, was appointed as both appellant's guardian and the conservator of his estate.

² The trial court did, however, grant the petition to terminate the guardianship.

novo.” MCL 600.866(1); *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). The probate court’s factual findings are reviewed for clear error. *Id.* “A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding.” *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2d 772 (2003). A trial court’s dispositional rulings are reviewed for an abuse of discretion. *Temple*, 278 Mich App at 128. An abuse of discretion occurs when the probate court “chooses an outcome outside the range of reasonable and principled outcomes.” *Id.*

The primary goal of the judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Booker v Shannon*, 285 Mich App 573, 575; 776 NW2d 411 (2009). If the statute’s language is clear and unambiguous, the statute must be enforced as written. *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001). “Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used.” *In re Smith Estate*, 252 Mich App 120, 124; 651 NW2d 153 (2002).

The termination of a conservatorship is governed by the Estates and Protected Individuals Code (“EPIC”), MCL 700.1101 *et seq.* MCL 700.5431 provides:

[t]he protected individual, conservator, or another interested person may petition the court to terminate the conservatorship. A protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. *Upon determining, after notice and hearing, that the minority or disability of the protected individual has ceased, the court shall terminate the conservatorship.* Upon termination, title to the estate property passes to the formerly protected individual or to successors subject to the provision in the order for expenses of administration and to directions for the conservator to execute appropriate instruments to evidence the transfer. [Emphasis added.]

According to the plain language of the statute, before the trial court can terminate a conservatorship, it must first determine, after notice and a hearing, that the disability of the protect individual has ceased. MCL 700.5431; see generally *In re Bontea Estate*, 137 Mich App 374, 377; 358 NW2d 14 (1984). After reviewing the record, we conclude that the trial court did not clearly err in determining that appellant’s disability had not ceased and that appellant’s disability could result in his being unduly influenced by others. The neuropsychological assessment reveals that appellant’s attention and working memory, cognitive processing efficiency and flexibility, verbal functioning, visual-perceptual functions, verbal learning and memory, and visual learning and memory were all below his expected performance range. The doctor’s conclusion specifically pointed out that appellant must continue to use the compensatory strategies that he learned in rehabilitation therapy in order for him to properly manage his personal and financial affairs. Further, as concluded by the trial court, given appellant’s poor performance in several areas of cognitive ability, the neuropsychological assessment’s silence regarding the specifics of whether, given appellant’s cognitive ability, he would be capable of handling his estate suggests that the doctor evaluating appellant was unaware of the complexity of the management of appellant’s future financial affairs. Likewise, considering attorney

Benjamin Whitfield's account of the actions of appellant's mother throughout the lower court proceedings, the neuropsychological assessment's silence regarding appellant's vulnerability to being influenced by others because of his cognitive disability suggests that the doctor did not consider this factor in his assessment of appellant's ability to manage his financial affairs. The trial court's determination that appellant's disability had not ceased was based on the neuropsychological assessment. The trial court acted properly when it denied the petition to terminate the conservatorship.

Appellant also argues that the trial court abused its discretion in removing his mother as the conservator of his estate. We disagree. A probate court's decision to remove a fiduciary is reviewed for an abuse of discretion. *In re Williams Estate*, 133 Mich App 1, 13; 349 NW2d 247 (1984). An abuse of discretion occurs when the probate court "chooses an outcome outside the range of reasonable and principled outcomes." *Temple*, 278 Mich App at 128.

The removal of a conservator is governed by EPIC, MCL 700.1101 *et seq.* MCL 700.5414 provides:

[t]he court may remove a conservator for good cause, upon notice and hearing, or accept a conservator's resignation. Upon the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

According to the plain language of the statute, the trial court had the discretion to remove appellant's mother as the conservator of appellant's estate for good cause, upon notice and a hearing. See generally *Bontea*, 137 Mich App at 377; *Williams*, 133 Mich App at 13. The trial court initially appointed appellant's mother as the conservator of appellant's estate but, once appellant's estate was to receive the settlement proceeds, the trial court required appellant's mother, as the conservator of appellant's estate, to get bonded in the amount of \$1,200,000. However, appellant's mother was unable to qualify for the required bond because of her poor credit history and, eventually, a special needs trust was created for the settlement proceeds with James McCann as the trustee so that appellant's mother could remain the conservator of appellant's estate. Therefore, contrary to appellant's assertion that the trial court removed appellant's mother because of undue influence, it is clear from the record that the trial court had good cause to remove appellant's mother as the conservator of appellant's estate once the special needs trust was eliminated because she was unable to qualify for the required \$1,200,000 bond.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Jane M. Beckering